IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2713 OF 2006

1. Umakant Pandurang Patange,
2. Jaiprakash Shivbasvarajswami Math, &
3. Vishnupant Narayan Hukkeri. ..Petitioners.

Versus

The State of Maharashtra. ..Respondent.

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Mr.V.V.Purwant, Adv. for the Petitioners.
Mrs.A.S.Pai, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : NOVEMBER 30, 2007.

P.C.:

. Leave to amend. Amendment to be carried out forthwith.

2. Heard the learned Advocate for the petitioners-orig.accused and the learned APP for the State.

3. The petitioners are seeking quashing of the charge framed against them under Sections 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter

referred to as ‘SC & ST Act’ for brevity), read with Sections 323, 325 of Indian Penal Code and 7(1)(d) of Protection of Civil Rights Act (hereinafter referred to as ‘P.C.R.Act’ for brevity), in Special Case No.17 of 2005 pending before the learned Additional Sessions Judge, Solapur. The said case pertains to C.R.No.3007 of 2005 of Sadar Bazar Police Station, Solapur.

4. Mr.Purwant, the learned Advocate for the petitioners states that at this stage he is only pressing for quashing of charge framed against the petitioners under Section 3(1)(x) of SC & ST Act and 7(1)(d) of P.C.R. Act. Mr.Purwant states that at this stage he is not pressing for quashing of charge against all the petitioners under Sections 323 & 325 of Indian Penal Code, so also as far as petitioner No.1 is concerned he is not pressing for quashing of charge under Section 7(1)(d) of P.C.R. Act, and he seeks liberty to file appropriate proceedings in respect of the charges under Sections 323 & 325 of Indian Penal Code in respect of all the petitioners and under Section 7(1)(d) of P.C.R. Act as far as

petitioner No.1 is concerned, at a later stage. Liberty as prayed for is granted.

5. The complaint in the present case is lodged by one Sanjay Kakade. He has stated that he along with others started an agitation against illegal private coaching classes. According to the complainant, the petitioners were teaching in private coaching class. It is further the case of the complainant that on 5.2.2005 he along with others went to the coaching classes of the petitioners, then he spoke to the petitioners. Thereafter he was returning back. It is the case of the complainant that while he was coming down the staircase of the building in which the coaching classes were being taken by the petitioners, petitioner No.1 called him hence the complainant turned back. At that time petitioner Nos.2 & 3 also came there and petitioner No.1 had uttered the words mentioned in the complaint against the complainant and all the petitioners have assaulted him.

6. In the present case the investigation is

over and the charge-sheet has been filed. The incident has taken place on the staircase of the building. The incident has not occurred within public view. Moreover, it is not the case of the complainant that at that time any other person was present. Infact the complainant has categorically stated that the other persons who were present with him had gone ahead, hence on the spot no other person was present except the complainant and the accused persons i.e. petitioners. As far as witnesses Pankaj and Sachin are concerned, they have also not actually witnessed the incident. On perusal of the entire charge-sheet, it is seen that except the complainant there is no eye witness to the incident and no other person has personally heard the words uttered by petitioner No.1 to the complainant. To attract the ingredients of Section 3(1)(x) of the SC & ST Act it is necessary that the act should take place in public view. In the present case the act has not taken place in public view, hence the Section would not be attracted in case of any of the petitioners. As far as Section 7(1)(d) of P.C.R. Act is concerned, only petitioner No.1 has uttered

the words. Looking to the material on record, it cannot be said that petitioner Nos.2 & 3 shared any common intention with petitioner No.1 in uttering such words.

7. In this view of the matter, the provisions of Section 3(1)(x) of SC & ST Act would not be attracted in the case of all the petitioners. Hence the charges against all the petitioners under Section 3(1)(x) of SC & ST Act are quashed. So also, for the reasons stated above, charge under Section 7(1)(d) of P.C.R. Act is quashed in respect of petitioner Nos.2 & 3. It is made clear that the prosecution in respect of other offences would continue. Liberty is granted to all the petitioners to take appropriate steps in respect of charge framed under Sections 323, 325 of Indian Penal Code as permissible in law. So also similar liberty is granted to petitioner No.1 in respect of charge under Section 7(1)(d) of P.C.R. Act.

8. Petition is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)